

IN THE MATTER OF : HOWARD COUNTY
HASAN OZCAN & HUSEYIN OZCAN : BOARD OF APPEALS
Petitioners : HEARING EXAMINER
: BA Case No. 14-015C

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DECISION AND ORDER

On September 15, 2014, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Hasan Ozcan and Huseyin Ozcan to modify Condition Nos. 5, 6 and 7 of Board of Appeals Case No. 13-025C for a Hair Salon Conditional Use for an existing handicap parking space, to retain the overall asphalt paving area and to change the location of two salon chairs, in an R-20 (Residential: Single Family) Zoning District, filed pursuant to Section 131.0.N.7 of the Howard County Zoning Regulations (the "Zoning Regulations").¹

Petitioners certified to compliance with the notice, posting, and advertising requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

Patrick Malloy represented Petitioners. Hasan Ozcan testified in support of the petition. No one appeared in opposition to the petition.

A Preliminary Matter

Although Petitioner's property has a Baltimore National Pike address, it is actually located on a dead-end service road accessible only from the eastbound lane of US 40. The

¹ As the Technical Staff Report notes, the petition does not call out which conditions of approval Petitioner seeks to modify, which appear to be Condition Nos. 5, 6, and 7.

Property is the last lot on this service road. During the proceeding, Hasan Ozcan testified to his desire to retain the entire existing paved area at issue in this case (See Findings No. 3, 8 & 10), explaining the paving is necessary because patrons of Pine Orchard Liquors to the west use his property to turn around, being unaware that the service road dead-ends and does not feed into Frederick Road (a portion of which runs to the north and northeast of the Property south of US 40). As the Hearing Examiner understood this testimony, Department of Planning and Zoning (DPZ) staff did not fully appreciate this situation when Mr. Ozcan explained it to them. With Petitioner's consent, the Hearing Examiner agreed to revisit the Property to gain a better understanding of the turnaround problem, and to refer the paving issue back to DPZ for comment, pursuant to Hearing Examiner Rule 10.4.

Having revisited the Property, the Hearing Examiner is unable to discern a turnaround problem and for this reason, she is not referring the paving issue back to DPZ. Ingress and egress driveways off US 40 in front of Pine Orchard Liquors provide access to this store and the commercial use to its west. For properties east of Pine Orchard Liquors, there is a second means of ingress/egress directly in front of the adjoining property on the liquor store's east side and which store patrons may also use to access US 40. Moreover, there is a large yellow "No Outlet" sign just beyond this second access. On none of the four site visits to the Property (two for the current petition and two for prior petitions) did the Hearing Examiner observe any vehicles turn around on the Property.

Petitioner introduced into evidence the exhibits as follows.

1. Pine Orchard subdivision plat

- 2A. Site plan depicting paving in first petition, BA Case No. 12-023C
- 2B. Site plan depicting two parking spaces
- 2C. Site plan depicting handicap parking space
- 2D. Site plan depicting resident parking
- 2E. Site plan depicting turnaround

FINDINGS OF FACT

1. Property Identification. The subject property is situated on the south side of US 40/Baltimore National Pike about 1,100 feet west of Centennial Lane and is also known as 10207 Baltimore National Pike (the "Property"). The Property is located in the 2nd Election District and is identified as Tax Map 24, Grid 1, Parcel 544, Lot 107. The Property is part of the Pine Orchard subdivision (Plat Book 4, Page 9, recorded December 1950).

2. Property Description. The 0.60-acre Property is improved with a one-story single-family dwelling located about 19 feet from the west property line and 51 feet from the front property line. To the east and south of the residence is a detached garage. To the rear of this garage is a shed and in-ground pool. A wire fence runs along the rear property and portions of the west property lines. A solid fence on the Property's east side screens the rear yard. Access to the Property is provided via a dead-end service road, which is accessible only from the eastbound lane of US 40. The Property is the last lot on this service road. Frederick Road terminates immediately east of the Property.

3. Property Description: Paving. In the interval between the Hearing Examiner's decision granting Petitioners' original Conditional Use petition for a beauty salon (BA 12-023C) and Petitioners' submission of a petition to modify certain approval conditions in that decision (BA 13-025C) (see Finding No.8), Petitioners impermissibly expanded the paved driveway

depicted on the BA 12-023C Conditional Use Plan (CUP) and added nine striped parking spaces. Although Petitioners removed the striping pursuant to BA 13-025C, there is still asphalt paving extending from the east side of the sidewalk to the front and easterly side lot line, including a portion of a strip of adjacent land identified as Orchard Lane. See Exhibit 2B.

4. Vicinal Properties. All properties to the east, west and south are zoned R-20. Lot 106 to the west is improved with a single-family detached dwelling. To the east is the strip of land identified as Orchard Lane. Properties to the south are each improved with a single-family detached dwelling. Across Frederick Road, to the northeast, are B-2 (Business: General) zoned properties. The closest, Parcel 420, is the site of a gasoline service station. Properties across US 40 are zoned B-1 (Business: Limited) and are improved with commercial buildings.

5. Roads. The service road portion of US 40 near the Property has two travel lanes and a variable paving width within a variable width right-of-way (ROW). US 40 on the north side of the median has two eastbound and two westbound travel lanes as well as various acceleration and deceleration lanes. The posted speed limited is 45 MPH.

6. Water and Sewer Service. The Property is served by public water and sewer.

7. General Plan. PlanHOWARD 2030 depicts the Property as Established Community on the Designated Place Types Map. US 40 is depicted as an Intermediate Arterial on the PlanHOWARD 2030 Functional Road Classification Map.

8. Zoning History.

BA Case No. 13-025C. December 16, 2013, granted to Hasan Ozcan and Huseyin Ozcan, approving a modification to Condition No. 2 of BA 12-023C to permit additional space in an existing beauty parlor, subject to 7 conditions.

1. The modification shall be conducted in conformance with and shall apply only to the 200sf ADA bathroom depicted on the October 2, 2013, Conditional Use Modification Plan and not to any other activities, use or structures on the Property.
2. The total Conditional Use area shall be no larger than 725 square feet.
3. Petitioners shall obtain any required Department of Inspections, Licensing and Permits permit for the ADA bathroom.
4. Mr. Ozcan shall be the sole operator. No additional operators or employees, paid or not, are permitted.
5. *Only two parking spaces shall support the hair salon use. (Emphasis added.)*
6. *Petitioners shall comply with the Original Case Finding of Fact No. 2, which described the Property as including a partially paved strip providing access to a paved driveway forming a "U" shaped drive around a landscaped area, as was depicted on the Original Case Conditional Use Plan. (Emphasis added.)*²
7. Petitioners shall comply with the Conditional Use Plan in the Original Case depicting two stations (two salon chairs) adjacent to a living room.

BA Case No. 12-023C. Granted February 14, 2013 to Hasan Ozcan and Huseyin Ozcan, for a Beauty Parlor/Barber Shop Conditional Use in an R-20 (Residential: Single Family), subject to 7 conditions.

1. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed beauty parlor as described in the petition and depicted on the conditional use plan submitted on November 21, 2012.
2. The Conditional Use area shall be no larger than 525 square feet.
3. The approved hours of use are 9:00 a.m. to 7:00 p.m., Monday-Friday, and 9:00 a.m. to 6:00 p.m. on Saturday.
4. Petitioners shall obtain a Department of Inspections, Licensing and Permits change of use permit for the conditional use and shall comply with Title III of the 2010 American Disability Act and the Maryland Accessibility Code.
5. Petitioners shall obtain all required permits. The conditional use shall not commence until Petitioners have obtained all required permits.
6. No signage is permitted in the median between US 40 and the service road.

² Finding of Fact No. 2 in BA 12-023C described the Property in this manner: The 0.60-acre Property is improved with a one-story single-family dwelling located about 19 feet from the west property line and 51 feet from the front property line. To the east of the residence is a detached garage. To the rear of this garage is a shed and in-ground pool depicted on the Conditional Use Plan as a ruin. A wire fence runs along the rear property and portions of the west property lines. A solid fence on the Property's east side screens the rear yard. A paved driveway near the northeast corner of the Property provides access to the garage. According to the TSR, the Record Plat depicts a 40-foot wide strip of land denoted as Orchard Lane adjoining the east side of the Property. This partially paved strip provides access to the paved driveway, forming a "U" shaped drive around a landscaped island.

Also of import to the current case is Finding No. 7, which describes the proposed conditional use and finds in part that "The TSR notes there is sufficient parking in the existing driveway to accommodate clients."

CE 13-084. Formal notice issued August 2, 2013 for the expansion of an approved Conditional Use case BA 12-023C (beauty parlor/barber shop occupies more space than approved and driveway was changed to a lined parking lot. Status: open

9. The Requested Modifications. Petitioners are now requesting to modify BA 13-025C Condition Nos. 5, 6 and 7 to: 1) change the location of the two salon chairs to a 325sf area depicted on the CUP, 2) expand the two parking spaces approved for the use to include an existing handicap parking space and approach to the handicap parking space and 3) retain the existing paved areas depicted on Exhibit 2D, including what is called out as residential parking areas.

10. Hasan Ozcan testified to his desire to retain the current, entire paved area at issue in this case because patrons of Pine Orchard Liquors to the west use his property to turn around, being unaware that the service road dead-ends and does not feed into Frederick Road. He also testified that his neighbors do not object to his interest in having the Property rezoned for commercial use.

CONCLUSIONS OF LAW

I. The Paving Issue

In BA 12-023C, the Hearing Examiner granted a Conditional Use for what the Zoning Regulations now categorize as a hair salon, subject to several stringent conditions. The intent of these conditions was to ensure the Conditional Use, which would operate as a home-

occupation use, would be low intensity and reasonably compatible with surrounding residential properties in an established community. To this end, the Hearing Examiner required Petitioners to remove the large illegal signs advertising the use.

In granting the modification petition (BA 13-025C), which increased the indoor Conditional Use area, the Hearing Examiner conditioned approval on there being only two supporting parking spaces. Because Petitioners had increased the Conditional Use parking area beyond that which was approved in BA 12-023C to include nine striped parking spaces on a much-enlarged paved area, the Examiner further conditioned approval on Petitioners complying with BA 12-023C Finding of Fact No. 2, which described the Property as including a partially paved strip providing access to a paved driveway forming a "U" shaped drive around a landscaped area. This condition was imposed to ensure the paved area would be only as large as that depicted on the BA 12-023C Case Conditional Use Plan for the home-occupation use.

Petitioners now seek relief from these paving conditions, alleging the "extra" paving area is for residential use and a response to the turnaround problem. In the Hearing Examiner's view, these claims of use and need are wholly unpersuasive. The "paving" conditions were imposed in BA 13-025C because the extensive amount of paving, including nine striped spaces, was, wholly incompatible with surrounding residential properties and unnecessary for a home-occupation Conditional Use. For these reasons, the Hearing Examiner is yet again restricting the paving area to that described in BA 12-023C Finding of Fact No. 2, except for the three spaces supporting the use.

II. General Criteria for Conditional Uses (Section 131.0.B)

Sections 131.0.B.1-3 requires the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district in which it is located through the application of three standards: harmony with the General Plan, intensity of use, and atypical adverse impacts.

A. Harmony and Intensity of Use

131.0.B.1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.

131.0.B.2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.

The interior modification/relocation of the salon chairs and the addition of a handicap parking space will not change the nature of the use approved in BA 12-023C. There are no land use policies in the General Plan that can be related to the use such that the use at the proposed location would be inharmonious with the Plan. Subject to the condition that the parking area/parking spaces/driveway remain as they were depicted on the Conditional Use Plan in BA 12-023C, with the exception of the existing handicap space granted retroactively in this Decision and Order, the intensity and scale of use is appropriate.

B. Adverse Impacts

Unlike Section 131.0.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under §131.B.2's six off-site, atypical "adverse effect" criteria": (a) physical conditions; (b) structures and

landscaping; (c) parking areas and loading; (d) access; (e) impact on vicinal environmentally sensitive areas, and; (f) impact on vicinal historic structures.

Inherent in the assessment of a proposed conditional use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed uses would have adverse effects in an R-20 district. The proper question is whether there are facts and circumstances showing the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception (conditional) use irrespective of its location within the zones. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and as conditioned, Petitioners have met their burden of presenting sufficient evidence under Section 131.0.B.2 of the Zoning Regulations to establish the proposed modifications will not have adverse effects on vicinal properties beyond those ordinarily associated with a home-occupation hair salon in an R-20 zoning district.

a. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.

Because the requested modification of use area is related to an indoor use and the handicap space is required, there are no atypical adverse impacts at the site. Subject to the paving area condition discussed above, without which the use would create atypical adverse impacts through the excessive size of the paved area, the petition complies with Section 131.0.B.3.a.

b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

No changes to the location, nature and height of structures, walls, fencing or landscaping are proposed. The petition complies with Section 131.0.B.3.b.

c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

As evaluated above, with the exception of the handicap space and the two existing spaces supporting the use, the paved area is excessive for a single-operator hair salon and unnecessary to support the residential use. However, subject to the condition that the paved area remain as they were in BA 12-023C (excepting the handicap space), the requested modification complies with Section 131.0.B.3.c.

d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.

No change to the existing ingress/egress is proposed. The petition complies with Section 131.0.B.3.d.

e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

There is no evidence of a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere, in compliance with Section 131.0.B.3.e.

f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

The request modifications will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere, in compliance with Section 131.0.B.3.e.

III. Specific Criteria for Barber Shop, Hair Salon and Similar Personal Service Facilities (Section 131.0.N.7)

A Conditional Use may be granted in RC, RR or R-20 Districts for a barber shop, hair salon or similar personal service facilities provided that:

a. The use shall be located within a residence and conducted by the person or persons residing in said residence.

The expanded use area will be located within the residence and conducted by Mr. Ozcan, a resident, in compliance with Section 131.0.N.7.a.

b. On lots less than one acre in size, the use shall be limited to one resident operator, with no other employees. On lots of one acre or larger, one additional operator or other employee may be permitted.

Mr. Ozcan is the resident operator. Subject to the condition that no other employee work in the salon, the petition complies with Section 131.0.N.7.b.

c. The road access to the use shall not be from a local road internal to a cluster subdivision and the driveway access to the use shall not be a shared driveway.

No such access applies. This section is inapplicable.

d. On the ALPP purchased or dedicated easement property, the following additional criteria are required:

- (1) The use shall not interfere with farming operations or limit future farming production.
- (2) The use shall operate within the principal dwelling unit. The dwelling and the parking associated with the proposed new facility shall count towards the cumulative use cap of 2% of the easement.

This section is inapplicable, as no ALPP purchased or dedicated easement property is involved.

ORDER

Based upon the foregoing, it is this **30th day of September 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Hasan Ozcan and Huseyin Ozcan to modify the approval conditions in BA 13-025C for an existing handicap parking space, for a total of three parking spaces to support the Conditional Use, is **GRANTED**.

That the petition of Hasan Ozcan and Huseyin Ozcan to modify the approval conditions in BA 13-025C to retain the existing paved area, exclusive of the three Conditional Use parking spaces abutting the east side of the sidewalk in front of the residence, is **DENIED**.

That the petition of Hasan Ozcan and Huseyin Ozcan to modify the approval conditions in BA 13-025C to relocate two salon chairs to a 325sf area depicted on the Conditional Use Plan is **GRANTED**.

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the Hair Salon as described in the petition and as depicted on the Conditional Use Plan submitted on July 8, 2014, with the exception of the denied expanded paving area, and not to any other activities, uses or structures on the Property.
2. There shall be no other salon chairs in any other portion of the home-occupation Hair Salon Conditional Use area or in any area of the residential use.
3. Mr. Ozcan shall be the sole operator. No additional operators or employees, paid or not, are permitted.
4. Only three parking spaces shall support the hair salon use.
5. Petitioners shall comply with the BA 12-023C Finding of Fact No. 2, which described the Property as including a partially paved strip providing access to a paved driveway forming a "U"

shaped drive around a landscaped area, as was depicted on the BA 12-023C Conditional Use Plan, with the exception of the three paved parking areas supporting the use.

6. Petitioner shall obtain all required permits.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

A handwritten signature in dark ink, appearing to read "Michael", is written over a horizontal line.

Date Mailed: 9-30-14

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.